

chapter 37 of title 18, United States Code, to promote Federal whistleblower protection statutes and regulations, to deter unauthorized disclosures of classified information, and for other purposes; to the Committee on the Judiciary.

#### ADDITIONAL COSPONSORS

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 619, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 3424

At the request of Mr. DURBIN, the names of the Senator from California (Mrs. BOXER) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 3424, a bill to amend the Animal Welfare Act to provide further protection for puppies.

S. 3914

At the request of Mrs. MURRAY, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 3914, a bill to amend title VIII of the Elementary and Secondary Education Act of 1965 to require the Secretary of Education to complete payments under such title to local educational agencies eligible for such payments within 3 fiscal years.

S.J. RES. 37

At the request of Mr. CARDIN, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S.J. Res. 37, a joint resolution calling upon the President to issue a proclamation recognizing the 35th anniversary of the Helsinki Final Act.

S. CON. RES. 71

At the request of Mr. FEINGOLD, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. Con. Res. 71, a concurrent resolution recognizing the United States national interest in helping to prevent and mitigate acts of genocide and other mass atrocities against civilians, and supporting and encouraging efforts to develop a whole of government approach to prevent and mitigate such acts.

S. RES. 680

At the request of Mr. KERRY, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. Res. 680, a resolution supporting international tiger conservation efforts and the upcoming Global Tiger Summit in St. Petersburg, Russia.

AMENDMENT NO. 4851

At the request of Mr. SESSIONS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 4851 intended to be proposed to Treaty Doc. 111-5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

AMENDMENT NO. 4904

At the request of Mr. CORKER, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of amendment No. 4904 proposed to Treaty Doc. 111-5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

AMENDMENT NO. 4913

At the request of Mr. LIEBERMAN, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of amendment No. 4913 intended to be proposed to Treaty Doc. 111-5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARDIN:

S. 4051. A bill to improve, modernize, and clarify the espionage statutes contained in chapter 37 of title 18, United States Code, to promote Federal whistleblower protection statutes and regulations, to deter unauthorized disclosures of classified information, and for other purposes; to the Committee on the Judiciary.

Mr. CARDIN. Mr. President, the current framework concerning the espionage statutes was designed to address classic spy cases involving persons who intended to aid foreign governments and harm the United States. The current framework traces its roots to the Espionage Act of 1917, which made it a crime to disclose defense information during wartime. The basic idea behind the legislation, which was upheld by the U.S. Supreme Court as constitutional in 1919, was to stop citizens from spying or interfering with military actions during World War I. The current framework was formed at a time when intelligence and national security information existed primarily in some tangible form, such as blueprints, photographs, maps, and other documents.

Our Nation, however, has witnessed dramatic changes to nearly every facet of our lives over the last 100 years, including technological advances which have revolutionized our information gathering abilities as well as the mediums utilized to communicate such information. Yet, the basic terms and structure of the espionage statutes have remained relatively unchanged since their inception. Moreover, issues have arisen in the prosecution and defense of criminal cases when the statutes have been applied to persons who may be disclosing classified information for purposes other than to aid a foreign government or to harm the United States. In addition, the statutes contain some terms which are outdated and do not reflect how information is

classified by the Executive branch today.

Legal scholars and commentators have criticized the current framework, and over the years, some federal courts have as well. In 2006, after reviewing the many developments in the law and changes in society that had taken place since the enactment of the espionage statutes, one district court judge stated that “the time is ripe for Congress” to reexamine them. *United States v. Rosen*, 445 F. Supp. 2d 602, 646 E.D. Va. 2006, Ellis, J. Nearly 20 years earlier in the *Morison* case, one federal appellate judge stated that “[i]f one thing is clear, it is that the Espionage Act statutes as now broadly drawn are unwieldy and imprecise instruments for prosecuting government ‘leakers’ to the press as opposed to government ‘moles’ in the service of other countries.” That judge also stated that “carefully drawn legislation” was a “better long-term resolution” than judicial intervention. See *United States v. Morison*, 844 F.2d 1057, 1086, 4th Cir. 1988.

As Chairman of the Senate Judiciary’s Terrorism and Homeland Security Subcommittee, I chaired a Subcommittee hearing on May 12, 2010, entitled “The Espionage Statutes: A Look Back and A Look Forward.” At that Subcommittee hearing, I questioned a number of witnesses, which included witnesses from academia as well as former officials from the intelligence and law enforcement communities, about how well the espionage statutes have been working. Since that hearing, I have been closely and carefully reviewing these statutes, particularly in the context of recent events. I am now convinced that changes in technology and society, combined with statutory and judicial changes to the law, have rendered some aspects of our espionage laws less effective than they need to be to protect the national security. I also believe that we need to enhance our ability to prosecute spies as well as those who make unauthorized disclosures of classified information if we add to the existing statutes. We don’t need an Official State Secrets Act, and we must be careful not to chill protected First Amendment activities. We do, however, need to do a better job of preventing unauthorized disclosures of classified information that can harm the United States, and at the same time we need to ensure that public debates continue to take place on important national security and foreign policy issues.

As a result, I am introducing the Espionage Statutes Modernization Act, ESMA, of 2010. This legislation makes important improvements to the espionage statutes to make them more effective and relevant in the 21st century. This legislation is narrowly-tailored and balanced, and will enable the government to use a separate criminal statute to prosecute government employees who make unauthorized disclosures of classified information in violation of the nondisclosure agreements